SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-513

SAVERIO COBUZZI,

Petitioner,

—v.—

STATE OF CONNECTICUT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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SAVERIO COBUZZI,

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STATE OF CONNECTICUT,

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

1. *Citation:* The decision of the Connecticut Supreme Court, *State of Connecticut* v. *Saverio Cobuzzi,* may be found in the Connecticut Law Journal, Volume XXXIII No. 2, July 13, 1971, at pages 1-4 as set forth in our appendix.

2. *Jurisdiction:* On July 13, 1971 the Supreme Court of Connecticut affirmed the judgment of the trial court denying petitioner's motion to suppress certain evidence seized from his automobile and dismissing other claims of error made by petitioner. Said judgment and opinion are set forth in our appendix. Under Connecticut procedure a party may file a written motion for reargument within ten days of announcement of the decision. Upon filing of the

motion the judgment is stayed until such time as the motion is acted upon. Conn. *Practice Book*, §§ 702-704. No motion for reargument was filed in the case at bar. On August 13, 1971 Hon. Alva P. Loiselle, a Justice of the Supreme Court of Connecticut, entered an order granting a stay of execution until November 15, 1971 of the judgment of the Superior Court, Hartford County, entered February 8, 1968 to enable petitioner to apply for and obtain a writ of certiorari from this Court, as is more fully set forth in our appendix. This Court has jurisdiction by reason of 28 U.S.C.A. § 1257(3).

3. *Question sought to be reviewed:* Did the Connecticut Supreme Court err in affirming the decision of the trial court denying petitioner's motion to suppress certain items taken from his automobile without arrest or search warrants and over petitioner's objection admitting the items and testimony concerning them into evidence?

4. *Constitutional Provisions:*

The petitioner relies upon the following provisions of the United States Constitution:

> "Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Constitution of the United States, Amendments 1 to 5, U.S.C.A., p. 102.
>
> "Amendment IX: The enumeration in the Constitution, of certain rights, shall not be construed to deny

or disparage others retained by the people." Constitution of the United States, Amendments 6 to 14, U.S. C.A., p. 193.

"Amendment XIV, Section 1: . . . nor shall any State deprive any person of life, liberty or property without due process of law; . . . " Constitution of the United States, Amendments 6 to 14, U.S.C.A., p. 288.

5. *Statement of the Case:*

Saverio Cobuzzi was charged with the crimes of breaking and entering with criminal intent, in violation of § 53-76 of the Connecticut General Statutes, larceny, in violation of § 53-63 of the Connecticut General Statutes, and possession of burglar's tools in the night, in violation of § 53-71 of the Connecticut General Statutes. After a plea of "not guilty" he elected a trial by the Court. The Court found him guilty on all three counts and on February 8, 1968 Cobuzzi was sentenced to prison. (Judgment and sentence set forth in appendix.) During the trial the Court denied Cobuzzi's motion to suppress evidence of a bag, a pair of pliers, a pair of gloves and some coins, and admitted these items and testimony concerning them into evidence over petitioner's objection and exception. On February 23, 1968 petitioner appealed to the Supreme Court of Connecticut assigning as error, among other grounds, a denial of the motion to suppress and the introduction of the items seized and testimony concerning them into evidence. On July 13, 1971, the Connecticut Supreme Court filed a decision affirming the judgment of the trial court on all issues.

The Facts

On May 13, 1967, Officer Edward Hart, Jr., of the Hartford, Connecticut police department observed petitioner Saverio Cobuzzi operating a 1962 Chevrolet sedan in downtown Hartford (R. 5).[1] The Cobuzzi vehicle was waiting for a traffic light to turn at the intersection of Main and Church Streets (R. 5, 10). The area was alternately described by police as commercial and hippie (R. 6; T. 26-27, 31). When the light turned Officer Hart observed that Cobuzzi, who had been proceeding easterly on Church Street, turned right and proceeded southerly down Main Street out of the officer's sight (R. 6, 10; T. 5-6). Five minutes later, Hart observed the Cobuzzi vehicle proceeding west on Asylum Street, a westerly artery of the city which connects to Main Street and is approximately one-half mile from the original sighting (R. 6, 10). Hart followed the Cobuzzi vehicle west on Asylum Street for two or three minutes and then stopped (R. 6, 10; T. 36). Fifteen minutes later, Hart saw the Cobuzzi vehicle again at High and Asylum Streets, about one-quarter of a mile from the point of second sighting. Hart followed the Cobuzzi vehicle to the corner of Trumbull and Pearl Streets, where he stopped the car (R. 6). As justification for stopping the Cobuzzi vehicle the following was testified under cross-examination:

> *Cross Examination by Mr. Karanian* (counsel for Cobuzzi): (T. 16-18)
>
> Q. Officer Hart, when was the first time that you saw this 1962 Chevy? A. It was approximately 3:34 a.m.

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[1] References to the Record will be designated "R"; references to transcript will be designated "T."

Q. On May 13, 1967? A. Yes, sir.

Q. Now, when you first observed this 1962 Chevy, was there anything about the operation of this vehicle which drew your attention to it? A. No, sir.

Q. Was there anything wrong with the operation of this vehicle? A. No.

Q. Was your attention brought to this car at that time because there was a white occupant and a colored occupant at 3:45 in the morning?

Mr. Silvester: I will object to that, if your Honor please.

The Court: Overruled. What was the answer?

The Witness: No, sir.

By Mr. Karanian:

Q. Then you stopped this vehicle even though there was nothing unusual about it, or nothing that called your attention to this vehicle, is that correct? A. Well, they aroused my suspicions.[2]

---

[2] Officer Hart testified to the same effect in a motion to suppress, filed before trial on behalf of Charles Anderson, Jr., the passenger. That Motion was heard before Honorable Leo Parskey who did not file a decision but reserved same for the Trial Court. Honorable Robert Wall who heard the motion contemporaneously with that of Cobuzzi, subsequently granted the motion to suppress against defendant Anderson because he was a passenger, not the owner and operator of the vehicle (R. 25). Under cross examination by Mr. Byrne (counsel for Anderson), Officer Hart testified as follows (T. 33, 35):

Q. You, representing the police department. They weren't doing anything wrong, were they? A. No.

Q. Was it because that he was a Negro that you stopped the car? A. No, sir.

Q. But they weren't doing anything wrong at that time as far as— A. Not to my knowledge, no.

Q. —in your official capacity. They were just driving around with the right that they had to do, right? A. Yes, sir.

Q. At the time that you first stopped them they weren't doing anything wrong? A. No, sir.

(*continued on following page*)

After he stopped the car, Hart walked over to the Cobuzzi vehicle and asked Cobuzzi for his license and registration, which Cobuzzi gave him. The registration revealed that Cobuzzi was the owner of the car and both documents were in proper order (R. 6; T. 11). In the front seat was a passenger, subsequently identified as Charles Anderson, Jr. Hart then questioned Cobuzzi as to his intentions. According to Hart, Cobuzzi said that he had finished work at 1:00 A.M.; that he was riding around for personal reasons; that he was going to Rocky Hill (a suburb of Hartford) and that he would be back in town in about half an hour (R. 6; T. 13). The following was testified on cross examination concerning a search of the Cobuzzi vehicle (T. 19-20):

By Mr. Koranicki:

Q. Now, when Mr. Cobuzzi told you, Officer, that he was going to Rocky Hill, did this arouse your suspicion, too? A. Yes.

Q. And when he told you he'd be back in about a half hour or so, did this also arouse your suspicion? A. No, not necessarily.

Q. Well, when you say "not necessarily," did it or didn't it? A. No.

Q. Now, you searched the car at this time, did you not, Officer, the first time that you stopped him? A. A visual search.

Q. A visual search? A. Yes.

Mr. Bryne: I have no further questions.

Redirect Examination by Mr. Daly:

Q. Mr. Bryne asked you about why you did stop them. Tell his Honor if you will precisely why you did stop the car? A. The reason I stopped them is on my own suspicions, just on a routine check, that's all.

Mr. Daly: Thank you, Officer Hart.

Q. Now, you say—did you go inside the car? A. No.

Q. You were outside the car at all times? A. Yes.

Q. And you say this bag[3] you observed was on the floor, is that correct? A. Yes.

Q. And you looked through the window at this paper bag on the floor and you observed these items, is that correct? A. Yes.

Q. Did you use a light? A. Flashlight.

Q. Did you open the bag? A. No, sir.

Q. Did you tell Mr. Cobuzzi why you stopped him, Officer? A. I believe I told him that I stopped him on a routine check. That's all.

Q. A routine check? A. Yes, sir.

Q. Now, are certain streets in this area, Officer, one-way streets? A. Yes, sir.

Q. Now, in order for, then, an individual to get from Church Street to Asylum Street he would have to take the route that Mr. Cobuzzi took, is that correct? A. Yes.

Q. So the mere fact that he was going up Church Street and turning right on Main Street and then going down Asylum Avenue, even though it's a one-way street and the pattern has to be followed, this aroused your suspicion, is that correct? A. Yes.

Q. You said yes? A. Yes.

Q. What aroused your suspicions, Officer Hart? A. As to the number of times I seen it, sir.

Q. How many times did you see it? A. Three.

Q. Three times? A. Yes, sir.

Q. Now, had you stopped any other vehicles, Officer,

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[3] The bag and its contents were the subject matter of the motion to suppress.

that you had seen more than once? A. On previous occasions, yes.

Q. You have? A. Yes, sir.

Q. And you always stop a car if you see it more than once? A. Yes. No, I wouldn't say more than once, if I see it maybe three or four times during the night, I would stop it, sir.

Q. Even though there's nothing unusual that called your attention to it? The mere fact that you see it, you would stop a car? A. Yes.

After questioning Cobuzzi and searching the car with his flashlight, Hart said that he let Cobuzzi go (R. 13-14). Cobuzzi testified that Hart told him to get out of town and stay out (T. 137).

Subsequently, Officer Hart proceeded to check the doors of various commercial establishments in downtown Hartford. He found that the offices of the Hartford Stamp and Coin Company on Church Street had been broken into and the cash register pried open. Hart notified police headquarters of the break and had a pick-up put out on the police radio for the Cobuzzi vehicle (R. 12-14).

At approximately 4:30 A.M., Officer Bernard Sullivan of the Hartford police department saw a 1962 green Chevrolet proceeding in a normal manner southerly on Route 91 toward Hartford. The Chevrolet was being tailed by a Rocky Hill police car which was being driven by Sgt. Coty of that department. Sullivan had heard on the police radio broadcast the pickup for Cobuzzi, setting forth the breaking and entering on Church Street and the fact that the Cobuzzi car contained a bag of coins. Accordingly, Sullivan flashed the Cobuzzi vehicle over to the side of the road. Coty also pulled over his cruiser. At the same time, an-

other Hartford police cruiser occupied by Officer Cahill who had heard the radio message pulled up (T. 80). The three cruisers blocked the Cobuzzi vehicle (T. 76). Officer Sullivan ordered Cobuzzi the driver and Anderson the passenger out of the car. Cobuzzi and Anderson were separated and taken to separate patrol cars. Officer Sullivan proceeded to search the Cobuzzi vehicle (R. 6-8, 14).

At trial the police claimed that Cobuzzi, prior to his removal to the patrol car, consented to the search of his car (R. 15, 17; T. 75). Cobuzzi emphatically denied this, stating that he had consented only to a search of the trunk, after the remainder of the car had already been searched (R. 4; T. 52, 62, 64). Officer Sullivan did not inform Cobuzzi that he was under arrest, nor did he advise him of his rights (R. 16; T. 44-45). None of the officers had arrest or search warrants (R. 16).

In the back of the car in the well behind the driver, Officer Sullivan found and removed a brown bag containing pennies, gloves and pliers (R. 7; T. 61, 79). Cobuzzi and Anderson were then taken by the police to Church Street, a distance of approximately one and one-half miles, in separate police cruisers (R. 8). The third police officer drove the Cobuzzi vehicle to Church Street. There, Cobuzzi was interrogated by Officer Hart (T. 105). Officer Hart did not advise Cobuzzi of his rights, nor did he have an arrest or search warrant. Cobuzzi denied any knowledge of the break in the coin store on Church Street and said he was unfamiliar with the store. Cobuzzi was then taken with Anderson to police headquarters, where he was booked (R. 31; T. 106).

Before the Trial Court, the evidence seized was offered solely on the basis of a consent search. The following is

an exchange between the Court and George Sylvester, the Assistant State's Attorney (R. 20):

> The Court: Then it's your claim that the search was made as incidental to a lawful arrest?
>
> Mr. Silvester: Oh, no, Your Honor.
>
> The Court: Why not?
>
> Mr. Silvester: Because the arrest would have had to occur, and then incidental to an arrest the officers would have been permitted to search.
>
> The Court: Why can't the arrest come later after the search if it's incidental to a lawful arrest? Does the arrest have to come first?
>
> Mr. Silvester: I don't know. I say, if Your Honor please, that we don't have to answer that question if we are dealing with the question of consent, and it seems to me if we believe what the officers have testified to that we are in the course of investigating a complaint, and we would like permission to search your car, and if he said, "Yes, go ahead," if on the one hand he admits, he says, "I permitted him to search the rear of the car but not the interior of the car," that doesn't seem to have any logic to it either.
>
> The Court: You are basing it solely on the factual question here for me to decide as to whether or not there was consent?
>
> Mr. Silvester: Yes, Your Honor.
>
> The Court: All right.

Notwithstanding the offer of proof, the Trial Court admitted the evidence, not on the theory of consent, but rather on the theory that the search of the vehicle on Route 91 was contemporaneous with a lawful arrest. The Court stated (R. 24-25):

> The Court: Oh, yes. All right. Well, on the basis of *State* v. *Hassett,* 155 Connecticut 225 at 232, it's the opinion of the Court that so far as the proposed exhibits are concerned that they were incident to the arrest and that the search is a lawful one, a contemporaneous search in accordance with the decision in that particular case, and I am admitting them on that ground as against the defendant Cobuzzi. • • • But so far as the Cobuzzi case is concerned, I believe that this was a reasonable search, that the officers acted reasonably and is incident to a lawful arrest, and the situation itself made this course imperative. So they may be marked as full exhibits in the case against Cobuzzi only.

6. *Argument of Law*

As to the First Seizure:

Petitioner submits that the investigative seizure by Officer Hart for purposes of detention and/or interrogation should have been based on some reasonable grounds. Significantly, the officer did not claim that the Cobuzzi vehicle was being driven in an unusual manner or that there was any unusual or suspicious behavior on Cobuzzi's part. Twice the officer answered in the negative when asked if he had a specific reason to stop the car. His only justification was that he had his "suspicions". More than an inarticulate suspicion is required to justify a detention. *Davis* v. *State of Mississippi,* 394 U.S. 721.

The justification for the stop was questioned by the Court (Parskey, J.) in the first Anderson motion to suppress (ftn. 2, *supra*). At the conclusion of testimony, Mr. Daly, the Assistant State's Attorney, argued against the

Anderson motion to suppress. The following dialogue then took place (T. 56-57):

> The Court: What you are suggesting is that at any time, at any time of the day or night an officer can stop any car and look inside it and whatever he sees he can later use as a basis for an arrest or further search. Is that your claim?
>
> Mr. Daly: No, it isn't my claim. First of all this car was stopped not for a capricious reason. It was three thirty in the morning. There were two people in it that had been riding by this area—
>
> The Court: You're suggesting at three thirty in the morning the police have a right to stop any motor vehicle that they see on the city streets?
>
> Mr. Daly: Yes, Your Honor, and ask the driver for his license and registration. Without question.

The subsequent justification offered by the State for the detention is Section 14-217 of the Connecticut General Statutes, which provides:

> § 14-217. *Operator to give name and show or surrender license and registration*
>
> No person who is operating or in charge of any motor vehicle, when requested by any officer in uniform, or, in the event of any accident in which the car he is operating or in charge of is concerned, when requested by any other person, shall refuse to give his name and address or the name and address of the owner of such motor vehicle or give a false name or address, or refuse, on demand of such officer or other person, to produce his motor vehicle registration certificate and operator's license or to permit such officer or such other person

> to take the operator's license and registration certificate in hand for the purpose of examination, or refuse, on demand of such officer or such other person, to sign his name in the presence of such officer or such other person; and no person shall refuse to surrender his license to operate motor vehicles or the certificate of registration of any motor vehicle operated or owned by him or the number plates furnished by the commissioner for such motor vehicle on demand of the commissioner or fail to produce his license when requested by a court. Any person who violates any provision of this section shall be fined not more than fifty dollars or imprisoned not more than thirty days or both.

Thus, the threshold issue is whether the police, acting pursuant to Section 14-217 or otherwise, may stop a vehicle without reasonable grounds, and detain the operator to secure license and registration information. Since he had a right to be on the public highway, petitioner submits that such a detention is, per se, invalid in that it violates petitioner's rights to privacy and his rights under the IV, IX and XIV Amendments.

Henry v. *United States,* 361 U.S. 98; *Terry* v. *Ohio,* 392 U.S. 1; *Sibron* v. *State of New York,* 392 U.S. 40; *Griswold* v. *State of Connecticut,* 381 U.S. 479; *State* v. *Goodman,* 449 S.W. 2d 656 (Mo. 1970).

Officer Hart here did more than request an examination of the license and registration, for Cobuzzi submitted both of these and they were found to be in proper order. The officer questioned Cobuzzi as to his intentions and conducted a visual search of his car with his flashlight. Thus, even if, which we do not concede, the officer had a right to check the registration and license of Cobuzzi, once these were

shown to him he had no right to interrogate Cobuzzi as to his reasons for being on a public highway and to search the car. Indeed, the questions asked of Cobuzzi and the flashlight search, cast doubt on the police claim that this was a routine license and registration check. Under these facts the involuntary detention and questioning of Cobuzzi constitute an arrest, or at the very least an unjustified "seizure."

Davis v. *State of Mississippi, supra; Terry* v. *Ohio, supra; Gilbert* v. *United States,* 366 F. 2d 923 (9th Cir. 1966).

As to the Second Seizure:

The subsequent investigation conducted by Officer Hart and the search and seizure on Route 91 were set in motion by the first illegal detention and search. The evidence seized on Route 91 was discovered by exploitation of the primary illegality. The purpose of the stop on Route 91 was to search the Cobuzzi vehicle and seize the bag in the back of the car. The search was not incidental, but primary. *Taglavore* v. *United States,* 291 F.2d 262 (9th Cir. 1961).

Petitioner claims that Officer Hart should have made an effort to secure an arrest and search warrant after the discovery of the break. The officer had an accurate description of the Cobuzzi vehicle, had reason to believe that the car would return to Hartford, and had the name and address of the owner and driver of the car. Such information should have been taken to a magistrate for a ruling on a warrant. *Spinelli* v. *United States,* 393 U.S. 410; *Whitely* v. *Warden,* 401 U.S. 560; *Giordenello* v. *United States,* 357 U.S. 480.

In any event, we submit that the officer, at the time acting on his own, did not have probable cause to believe that Cobuzzi committed a felony. Neither the bag of coins in the back of the car nor the mere presence of Cobuzzi in the area was sufficient ground. *Sibron* v. *New York, supra; Johnson* v. *United States,* 333 U.S. 10; *United States* v. *Di Re,* 332 U.S. 581.

The officer should have asked himself why, if in fact Cobuzzi was guilty, he would continue to drive around downtown Hartford with stolen property. Moreover, if he were guilty, why would he choose to return to downtown Hartford with stolen coins. An experienced police officer should have evaluated these factors prior to putting out the order for the pickup.

The justification offered by the State at the trial for the search of the Cobuzzi vehicle was consent. Once the Cobuzzi vehicle was flashed to the side of the road and blocked, Cobuzzi and Anderson were ordered out of the car. Any claim of consent made in the presence of the three officers is under color of the badge and constituted acquiescence to a claim of lawful authority. *Bumper* v. *North Carolina,* 391 U.S. 543. Significantly, the Court did not admit the evidence on the theory of consent, but rather on the basis that the search was incidental to a lawful arrest.

Assuming that the trial court was correct in ruling that the arrest had occurred on Route 91, Cobuzzi should have been advised of his rights. *Miranda* v. *Arizona,* 384 U.S. 436. Moreover, the search of the vehicle there cannot be justified on the usual grounds, namely, the presence of weapons and the possibility of removal of the vehicle. Cobuzzi and Anderson both were out of the car and obviously could not get into the car to reach over the back seat

to secure a weapon. No claim has been made by the police as to a weapon search. In reality, the police had control of the vehicle at that point and it could not be removed.

Cobuzzi and Anderson were taken to Church Street in separate patrol cars. Again, prior to being interrogated there by Officer Hart, Cobuzzi should have been advised of his rights. *Miranda* v. *Arizona, supra.* The police had another opportunity to secure a search warrant of the Cobuzzi vehicle. The car at that time was in their possession and was being operated by another police officer.

CONCLUSION

Thus, observations in the first instance of wholly innocent behavior were used to justify an illegal detention. That detention was used as a further justification for an improper interrogation and search. Finally, the exploitation of that illegality was used to justify an arrest and search without warrant, and without advising Cobuzzi of his rights.

Wherefore, petitioner prays that his application for the issuance of a writ of certiorari be granted.

Respectfully submitted,

Petitioner, Saverio Cobuzzi

By Stuart N. Updike, Esq.
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Certificate of Service

Personally appeared the undersigned, who being duly sworn, deposes and says:

1. He is a member of the United States Supreme Court Bar, the Bar of the State of Connecticut, and the Bar of the State of New York.

2. On the 12th day of October, 1971, he deposited this pleading together with all attached papers in a United States Post Office mail box with the appropriate first class postage affixed thereto addressed to John D. LaBelle, Esq., State's Attorney for Hartford County, 95 Washington Street, Hartford, Connecticut 06106.

STUART N. UPDIKE

APPENDIX

Opinion of Connecticut Supreme Court Filed July 13, 1971, Affirming the Judgment of the Trial Court

SUPREME COURT

MAY TERM, 1971

STATE OF CONNECTICUT,

—v.—

SAVERIO COBUZZI.

Information in three counts charging the defendant with the crimes of breaking and entering, larceny and possession of burglar's tools, brought to the Superior Court in Hartford County and tried to the court, *Wall, J.;* judgment of guilty on all counts and appeal by the defendant. *No error.*

Charles G. Karanian, with whom, on the brief, were *Daniel J. Hagearty* and *Lewis Platt,* for the appellant (defendant).

George D. Stoughton, chief assistant state's attorney, with whom, on the brief, was *John D. LaBelle,* state's attorney, for the appellee (state).

LOISELLE, J. In a trial to the court the defendant was found guilty of breaking and entering with criminal intent in violation of § 53-76 of the General Statutes, larceny in violation of § 53-63 and possession of burglar's tools in the night in violation of § 53-71.

The defendant has assigned error in certain rulings of the trial court on evidence, in the finding and in the court's conclusion that on all the evidence the defendant was guilty beyond a reasonable doubt of the crimes charged.

The defendant's first claim is that the trial court erred in denying his motion to suppress evidence of a bag, a pair of pliers, a pair of gloves and some coins and in admitting these items and testimony concerning them into evidence. The gravamen of the defendant's claim is that the evidence in question was obtained as a result of an illegal search and seizure in violation of his federal and state constitutional rights. The defendant assigns as error the court's conclusion to the effect that the evidence was seized as the result of a valid search incident to a lawful arrest. It is well established that "a properly conducted search incidental to a lawful arrest is not illegal even though it is made without a warrant." *State* v. *Collins,* 150 Conn. 488, 492, 191 A.2d 253; *State* v. *Adinolfi,* 157 Conn. 222, 226, 253 A.2d 34. Thus, if the evidence was obtained as the result of a valid search and seizure incident to a lawful arrest, as the court concluded, the evidence was not illegally obtained and was admissible. *Draper* v. *United States,* 358 U.S. 307, 314, 79 S. Ct. 329, 3 L. Ed. 2d 327; *United States* v. *Rabinowitz,* 339 U.S. 56, 60, 70 S. Ct. 430, 94 L. Ed. 653; *State* v. *DelVecchio,* 149 Conn. 567, 573, 182 A.2d 402.

The facts found by the trial court relevant to the issue of whether the evidence was obtained as the result of a valid search and seizure incidental to a lawful arrest may be summarized as follows. Early in the morning of May 13, 1967, Officer Edward C. Hart, Jr., of the Hartford police observed the defendant operating a motor vehicle at Main and Church Streets near the Hartford Stamp and Coin Company, which is located at 56 Church Street in the city of

Hartford. He next saw the defendant's vehicle at Trumbull and Asylum Streets. He followed it west on Asylum Street to High Street and stopped at High Street while the defendant drove on. A few minutes later Hart again saw the defendant's vehicle at High and Asylum Streets, whereupon he followed it and stopped it at Trumbull and Pearl Streets at about 3:45 a.m., which was about fifteen minutes after he first saw the vehicle. The neighborhood in question is a commercial area that is ordinarily deserted at that hour. Hart, acting pursuant to General Statutes § 14-217, asked for and received the defendant's operator's license and registration. The defendant told Hart that he had finished work at 1 a.m., that he was out on personal business and that he was going to Rocky Hill. While talking to the defendant Hart saw, in plain view on the floor of the back seat, an open brown paper bag containing pennies, a pair of black gloves and a pair of pliers. Hart did not detain the defendant and proceeded to check the doors of various commercial establishments. In so doing he found that the Hartford Stamp and Coin Company had been broken into by the breaking of a glass panel in the door and that the cash register inside had been pried open.

The court further found that at 4:30 o'clock on the same morning Officer Bernard Sullivan of the Hartford police stopped the defendant's vehicle at the Capitol area exit from route 91 southbound into Hartford. Sullivan was acting on information based on the observations of Officer Hart which gave him probable cause to believe that the defendant had committed or was committing a felony. Sullivan had been informed by police radio that a coin store had been broken into and that a policeman had seen some coins in the defendant's vehicle. When Sullivan stopped the defendant, the defendant was driving and had a passenger. Sul-

livan ordered both to leave the vehicle. He asked the defendant if he could search the vehicle. The defendant told him to go ahead and said he had nothing to hide. Sullivan observed a brown paper bag containing pliers, black leather gloves and some change made up mostly of pennies. Sullivan did not inform the defendant that he was under arrest although the defendant was placed under actual restraint and the defendant submitted to the custody of the officer. At that time, Sullivan did not intend to inform the defendant that he was under arrest unless the defendant resisted, leaving this disclosure to Hart, the investigating officer.

The defendant has assigned error in the trial court's finding of certain of the aforementioned facts. Since, however, the defendant has not briefed these assignments, they must be treated as abandoned. *Johnston Jewels, Ltd.* v. *Leonard,* 156 Conn. 75, 77, 239 A.2d 500; *Bartlett* v. *Flaherty,* 155 Conn. 203, 205, 230 A.2d 436.

The first question is whether, in light of the facts found, the arrest, to which it is claimed the search was incident, was a legal arrest. A search cannot be sustained as incident to an arrest unless the arrest itself was valid. See *State* v. *Spellman,* 153 Conn. 65, 70, 212 A.2d 413. The validity of the arrest is to be determined by the application of § 6-49 of the General Statutes, which authorizes a police officer to arrest without a warrant "any person who such officer has reasonable grounds to believe has committed or is committing a felony." "[R]easonable grounds to believe" is to be equated with probable cause. *Henry* v. *United States,* 361 U.S. 98, 100, 102, 80 S. Ct. 168, 4 L. Ed. 2d 134; *State* v. *Wilson,* 153 Conn. 39, 41, 212 A.2d 75. "In dealing with probable cause . . . , as the very name implies, we deal with probabilities. These are not technical, they are factual and practical considerations of everyday life on which

reasonable and prudent men, not legal technicians, act." *Brinegar* v. *United States,* 338 U.S. 160, 175, 69 S. Ct. 1302, 93 L. Ed. 1879; *State* v. *Wilson,* supra. In order to establish probable cause, it is not necessary to produce a quantum of evidence necessary to convict. *Draper* v. *United States,* 358 U.S. 307, 311, 79 S. Ct. 329, 3 L. Ed. 2d 327; *State* v. *Sweeney,* 157 Conn. 485, 488, 255 A.2d 622; *State* v. *Towles,* 155 Conn. 516, 520, 235 A.2d 639; *State* v. *Wilson,* supra, 42. Probable cause exists when the facts and circumstances within the knowledge of the officer and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution to believe that a felony has been committed. *Beck* v. *Ohio,* 379 U.S. 89, 91, 85 S. Ct. 223, 13 L. Ed. 2d 142; *Brinegar* v. *United States,* supra; *Carroll* v. *United States,* 267 U.S. 132, 162, 45 S. Ct. 280, 69 L. Ed. 543; *State* v. *Towles,* supra; *State* v. *Wilson,* supra; *State* v. *Elliott,* 153 Conn. 147, 152, 215 A.2d 108.

Officer Hart was legally justified in stopping the defendant's vehicle after noting the circuitous route the vehicle was taking in a commercial area which was ordinarily deserted in the early morning. Under these circumstances he was entitled to make a license and registration check pursuant to the provisions of § 14-217. During the process of checking these documents he saw an open bag containing change, gloves and pliers on the floor of the back seat. His observation of these items did not constitute an unlawful search and seizure inasmuch as they were in plain view. See *Harris* v. *United States,* 390 U.S. 234, 236, 88 S. Ct. 992, 19 L. Ed. 2d 1067; *Ker* v. *California,* 374 U.S. 23, 43, 83 S. Ct. 1623, 10 L. Ed. 2d 726; *State* v. *Smith,* 157 Conn. 351, 355, 254 A.2d 447; *State* v. *Adinolfi,* 157 Conn. 222, 224, 253 A.2d 34. When Officer Hart discovered that a coin store

in the area had been broken into, he had "reasonable grounds to believe" that the defendant had committed a felony. It is true that Officer Sullivan, the arresting officer, did not have firsthand knowledge of the aforementioned facts; but the existence of probable cause is to be determined on the basis of the collective information of the law enforcement organization as a whole and not solely on that of the arresting officer. *Williams* v. *United States,* 308 F.2d 326 (D.C. Cir.); *State* v. *Wilson,* 153 Conn. 39, 42, 212 A.2d 75; see also *Whiteley* v. *Warden,* —— U.S. ——, 91 S. Ct. 1031, 28 L. Ed. 2d 306. Thus, when Officer Sullivan stopped the defendant's vehicle, probable cause for arrest existed.

There remains the question whether the search was contemporaneous with the arrest. A valid search incident to an arrest must be contemporaneous with the arrest. *Warden* v. *Hayden,* 387 U.S. 294, 299, 87 S. Ct. 1642, 18 L. Ed. 2d 782; *Preston* v. *United States,* 376 U.S. 364, 367, 84 S. Ct. 881, 11 L. Ed. 2d 777; *State* v. *Hassett,* 155 Conn. 225, 232, 230 A.2d 553. "Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest." *Preston* v. *United States,* supra. After Officer Sullivan stopped the defendant's vehicle, he ordered the defendant out of the car and placed him under actual restraint and the defendant submitted to his custody. Although the defendant was not formally arrested until later that morning, when he was taken to police neadquarters and booked, it is unnecessary under the circumstances of the present case to decide whether he was arrested when he was taken into custody on the street or when he was taken to police headquarters and booked. The happenings within this period must be considered one transaction. *State* v. *Hassett,* supra. The find-

ing does not disclose whether the defendant was under restraint before or after the search. As it has been pointed out, however, Sullivan had probable cause to arrest the defendant at the time his vehicle was stopped. It is clear that the search was made shortly thereafter, and that it was not remote in time and place from the occurrence of the actual restraint of the defendant. It is also clear that the search and the placing of the defendant under actual restraint were an integral part of a single incident. A search may be incident to an arrest even though the search precedes the arrest if adequate grounds exist at the time of the search and both the arrest and the search are integral parts of a single incident. See *Ker* v. *California,* 374 U.S. 23, 42-43, 83 S. Ct. 1623, 10 L. Ed. 2d 726; *Buick* v. *United States,* 396 F.2d 912, 915 (9th Cir.); *Bailey* v. *United States,* 389 F.2d 305, 308 (D.C. Cir.); *United States* v. *Lucas,* 360 F.2d 937, 938 (6th Cir.); *United States* v. *Gorman,* 355 F.2d 151, 159-160 (2d Cir.), cert. denied, 384 U.S. 1024, 86 S. Ct. 1962, 16 L. Ed. 2d 1027; *State* v. *Elliott,* 153 Conn. 147, 154, 215 A.2d 108; *People* v. *Simon,* 45 Cal. 2d 645, 648, 290 P.2d 531; *State* v. *Doyle,* 42 N.J. 334, 343, 200 A.2d 606; *State* v. *McDaniel,* 115 Ore. 187, 241, 231 P. 965, 237 P. 373. Thus, even assuming the search occurred before the placing of the defendant under actual restraint, the search was incident to the defendant's arrest.

Furthermore, the search and seizure were clearly permissible under the rule enunciated in *Chambers* v. *Moroney,* 399 U.S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419; see also *State* v. *Holmes,* 160 Conn. 140, 274 A.2d 153. It follows that these items and testimony concerning them were not inadmissible on the ground that they were obtained as the result of an illegal search and seizure.

The defendant also claims in effect that the trial court erred in admitting this evidence on the ground that it abused its discretion by ruling that the evidence was admissible on the basis of a theory and for reasons different from those advanced by the state. This claim, however, is without merit. This is not like the cases relied on by the defendant where the trial court interfered with the presentation of the defendant's case at the trial so as to prejudice the defendant. *State* v. *Gionfriddo*, 154 Conn. 90, 97, 221 A.2d 851; *Quednau* v. *Langrish*, 144 Conn. 706, 137 A.2d 544. Rather, this is a case involving a ruling by the court on the defendant's claim that the evidence was inadmissible because it was obtained as a result of an illegal search and seizure. The court concluded that the evidence was obtained as a result of a legal search and seizure on the ground that it was seized in connection with a valid search incident to a lawful arrest rather than on the ground urged by the state, namely, that it was seized in connection with a search to which the defendant had validly consented. Both counsel for the defendant and counsel for the state were given a full opportunity to offer evidence on this issue and to make arguments on the legal significance of this evidence. Although the state urged that the evidence was admissible on the theory that it was seized in connection with a search to which the defendant had validly consented, both the defendant's counsel and counsel for the state specifically addressed themselves to the question whether the evidence was admissible on the theory that it was seized as a result of a valid search incident to a lawful arrest. Under these circumstances it certainly cannot be said that the court's ruling that the evidence was admissible constituted an abuse of discretion merely because the court did not adopt the state's position.

The defendant's final claim is that the trial court erred in concluding on all the evidence that the defendant was guilty beyond a reasonable doubt of the crimes charged, namely, breaking and entering, larceny and possession of burglar's tools in the night. Such a claim must be tested by the evidence printed in the appendices to the briefs. *State* v. *Moreno,* 156 Conn. 233, 236, 240 A.2d 871; *State* v. *Davis,* 153 Conn. 228, 229, 215 A.2d 414; *State* v. *Pundy,* 147 Conn. 7, 9, 156 A.2d 193.

The evidence may be summarized as follows. In the early morning hours of May 13, 1967, a Hartford police officer stopped a car occupied by the defendant and, upon looking through the car window, the officer saw a paper bag containing pennies, a pair of gloves and a pair of pliers on the floor of the back seat. The officer did not detain the defendant and proceeded to check commercial establishments in the area. He discovered that a coin store had been broken into and that the cash drawer of a brown register inside had been pried open. There was an indentation in the register where the drawer had been pried open and the brown paint on the register had been chipped away. The change, including a quantity of pennies which had been in the drawer when the store owner left the store at six o'clock on May 12, 1967, was missing. Shortly after it was discovered that the coin store had been broken into, a car driven by the defendant was stopped by another Hartford police officer. A bag was found in the car. The bag contained change made up mostly of pennies. It also contained a pair of pliers with a chip of brown paint on its nose. The nose of the pliers fitted the indentation on the aforementioned register. This evidence and the inferences which the court could reasonably draw from it were suffi-

cient to support its conclusion that the defendant was guilty beyond a reasonable doubt of the crimes charged.

The defendant has pursued several other assignments of error relating to the trial court's refusal to find certain paragraphs of his draft finding and relating to certain of the trial court's conclusions. We need not, however, review these conclusions since they would not affect the final result. *Covino* v. *Pfeffer*, 160 Conn. 212, 217, 276 A.2d 895; *Fritz* v. *Mazurek*, 156 Conn. 555, 561, 244 A.2d 368; *Goldstein* v. *Hartford*, 144 Conn. 739, 740, 131 A.2d 927.

There is no error.

In this opinion the other judges concurred.

Judgment of Trial Court Entered February 8, 1968

STATE OF CONNECTICUT

HARTFORD COUNTY, SUPERIOR COURT

HON. WALTER J. SIDOR, Judge (Sentence)
HON. ROBERT A. WALL, Judge (Trial)

February 8, 1968

No. 28467

STATE,

vs.

SAVERIO COBUZZI.

John D. LaBelle, State's Attorney for the County of Hartford, accuses Saverio Cobuzzi, of New Britain, Connecticut, of Breaking and Entering with Criminal Intent at the City of Hartford, on or about the 12th day of May, 1967, in violation of Section 53-76 of the General Statutes, Revision of 1958, as charged in first count; and further accuses the said Saverio Cobuzzi of Larceny at the City of Hartford, on or about the 12th day of May, 1967, in violation of Section 53-63 of the 1965 Supplement to the General Statutes, as charged in the second count; and further accuses the said Saverio Cobuzzi of Possession of Burglars' Tools in the Night at the City of Hartford, on or about the 12th day of May, 1967, in violation of Section 53-71 of the General Statutes, Revision of 1958, as charged in third count, as by information on file will appear.

To all counts of said information, the said Saverio Cobuzzi, on June 16, 1937, pleaded and said that he was not guilty and elected to be tried by the Court.

Said cause having been fully heard, the Court finds the said Saverio Cobuzzi guilty as charged in said information and that he be imprisoned in the Connecticut State Prison during the period of not less than one (1) year nor more than two (2) years on first count and one (1) year on third count, and judgment suspended on second count.

By the Court.
PAUL LEVINE.
Assistant Clerk.

Application and Order of Stay of Execution From Enforcement of Judgment Rendered February 8, 1968

SUPREME COURT

STATE OF CONNECTICUT

August 11, 1971

No. 6723

STATE OF CONNECTICUT,

vs.

SAVERIO COBUZZI.

To the Honorable Alva P. Loiselle, Justice of the Connecticut Supreme Court:

Your defendant and appellant, Saverio Cobuzzi, respectfully presents his application for an order staying the execution and enforcement of the judgment of the Superior Court for Hartford County, rendered in the above cause on February 8, 1968, and the affirmation of said judgment by the Supreme Court of Connecticut, announced July 13, 1971, for a reasonable time under the provisions of section 2101 (F) of title 28 of the United States Code, to enable petitioner to apply for and obtain a writ of certiorari from the Supreme Court of the United States.

The grounds upon which said petition for certiorari will be based are as follows:

1. The decision rendered by the Supreme Court of Connecticut in the above entitled matter deprived the defendant and appellant, Saverio Cobuzzi, of the rights guaranteed to him by the Constitution of the United States, Article 4, Article 9 and Article 14, Section 1.

The reasons why a stay is deemed necessary and advisable are as follows:

The defendant and appellant, Savario Cobuzzi, is presently under a $1,000.00 bond to the State of Connecticut pending the final disposition of the above entitled matter and his incarceration before final determination by the United States Supreme Court will inflict upon him undue and unnecessary hardship and financial loss.

Dated at Hartford, Connecticut, this 11th day of August, 1971.

BOURKE G. SPELLACY
UPDIKE, KELLY & SPELLACY, P.C.
Counsel for Defendant and Appellant

Motion and Certificate for Stay of Execution

SUPREME COURT

STATE OF CONNECTICUT

August 11, 1971

No. 6723

STATE OF CONNECTICUT,

vs.

SAVERIO COBUZZI.

Now comes the appellant, Saverio Cobuzzi, and moves the court to enter an order staying execution of the judgment in the above entitled case because it is the bona fide intention of the appellant to make proper application to the Supreme Court of the United States for a writ of certiorari in this case, within the time allowed by the law, and in support hereof appellant incorporates the certificate of his counsel, Bourke G. Spellacy of Hartford, Connecticut.

I hereby certify that it is the bona fide intention of the appellant to make application to the Supreme Court of the United States for a writ of certiorari within the time allowed by law, and that I believe there is merit in his case and that the judgment of the Supreme Court of Connecticut should be reversed by the Supreme Court of the United States.

BOURKE G. SPELLACY
UPDIKE, KELLY & SPELLACY, P.C.
Counsel for Petitioner

Order Granting Stay of Execution

SUPREME COURT

STATE OF CONNECTICUT

August 11, 1971

No. 6723

STATE OF CONNECTICUT,

v.

SAVERIO COBUZZI.

Upon application of Saverio Cobuzzi, appellant in the above entitled cause, by Bourke G. Spellacy, his counsel, for a stay of execution and enforcement of the judgment of the Superior Court for Hartford County to enable said Saverio Cobuzzi to apply for and obtain a writ of certiorari from the Supreme Court of the United States, and good cause therefor being shown, it is ORDERED that the execution and enforcement of said judgment be and it hereby is stayed until November 15, 1971, at ten o'clock in the forenoon, to enable said Saverio Cobuzzi to apply for and obtain a writ of certiorari from the Supreme Court of the United States, on condition that said Saverio Cobuzzi gives good and sufficient security, in the sum of $1,000.00 conditioned that if said Saverio Cobuzzi fails to make application for such writ of certiorari within the time limited therefor, or fails to obtain an order granting his applica-

tion, or fails to make his plea good in the Supreme Court of the United States, he shall answer for all damages and costs which the said State of Connecticut may sustain by reason of said stay.

Dated at Hartford, Connecticut, this 13th day of August, 1971.

ALVA P. LOISELLE
A Justice of the Connecticut Supreme Court

Statutes Under Which Cobuzzi Was Convicted

CONNECTICUT STATUTES

§53-76. *Breaking and entering with criminal intent*

Any person who, with intent to commit any crime therein, breaks and enters any building or vessel, or any motor vehicle, in the possession of another used as a place for the custody of property, or any building used as a place of instruction or of public worship, shall be imprisoned not more than four years. (1949 Rev., §8413; 1951, Supp. §3277d.)

§53-63. *Larceny. Shoplifting*

(a) Any person who steals any money, goods or chattels, or any bill issued by any state bank or national banking association, or any deed, lease, indenture, bond, writing obligatory, bill of exchange, promissory note, warrant or order for the payment of money or delivery of goods, receipt or discharge, or any book account or other writing being evidence of debt, adjustment or settlement, if the value of the property stolen exceeds two thousand dollars, shall be imprisoned not more than twenty years or fined not more than one thousand dollars or both; if it exceeds two hundred fifty dollars but does not exceed two thousand dollars, he shall be imprisoned not more than five years or fined not more than five hundred dollars or both; if it does not exceed two hundred fifty dollars but exceeds fifteen dollars, he shall be fined not more than two hundred dollars or imprisoned not more than six months or both; if it does not exceed fifteen dollars, he shall be fined not

more than twenty-five dollars or imprisoned not more than thirty days or both. (b) Any person who wilfully takes possession of any goods, wares or merchandise offered or exposed for sale by any store or other mercantile establishment with the intention of converting the same to his own use, without paying the purchase price thereof, if the value of the goods, wares or merchandise exceeds two thousand dollars, shall be imprisoned not more than twenty years or fined not more than one thousand dollars or both; if it exceeds fifty dollars but does not exceed two thousand dollars, he shall be imprisoned not more than five years or fined not more than five hundred dollars or both; if it does not exceed fifty dollars but exceeds fifteen dollars, he shall be fined not more than two hundred dollars or imprisoned not more than six months or both; if it does not exceed fifteen dollars, he shall, for the first offense, be fined not more than one hundred dollars or imprisoned not more than sixty days or both. For a second or subsequent offense involving goods, wares or merchandise of a value not in excess of fifty dollars, he shall be fined not less than fifty dollars nor more than two hundred dollars or imprisoned not less than thirty days nor more than one year or both. (c) Any person wilfully concealing unpurchased goods or merchandise of any store or other mercantile establishment, either on the premises or outside the premises of such store, shall be prima facie presumed to have so concealed such article with the intention of converting the same to his own use without paying the purchase price thereof within the meaning of subsection (b) of this section. The presence of such unpurchased goods or merchandise concealed upon the person or among the belongings of such person shall be prima facie

evidence of wilful concealment and, if such person conceals, or causes to be concealed, such unpurchased goods or merchandise upon the person or among the belongings of another, the presence of the same shall also be prima facie evidence of wilful concealment on the part of the person so concealing such goods. (1961, P.A. 305.)

§53-71. *Possession of arms or burglars' tools in the night*

Any person who is, in the night, armed with any dangerous or offensive weapon or instrument, with intent to break or enter any dwelling-house or other building and to commit any crime therein, or, in the night, has in his possession, without lawful excuse, the proof of which excuse shall be upon him, any key, picklock, jimmy, jack or bit or other instrument of house-breaking or, in the night, has his face blackened or otherwise disguised, with intent to commit any crime, or is, in the night, unlawfully in any dwelling-house or other building, with intent to commit any crime, shall be imprisoned not more than five years. (1949 Rev., §8408.)